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10/721,010	11/24/2003	Ross Koningstein	Google-48 (GP-083-00-US)	5650
26479	7590	06/06/2008	EXAMINER	
STRAUB & POKOTYLO 788 Shrewsbury Avenue TINTON FALLS, NJ 07724			BRANDENBURG, WILLIAM A	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/721,010

**Applicant(s)**

KONINGSTEIN ET AL.

**Examiner**

WILLIAM A. BRANDENBURG

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-37 and 60-74 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-37 and 60-74 is/are rejected.
- 7) ☒ Claim(s) 69 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date See Continuation Sheet
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Continuation of Attachment(s) 3. Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :01/08/07, 01/22/07, 01/30/07, 10/29/07, 01/11/08, 02/13/08.

**DETAILED ACTION**

1. The following is a non-final, first action on the merits in response to application filed on 05/09/2008. Claims 23-37 and 60-74 are pending.

***Election/Restrictions***

2. Applicant's election of claims 23-37 and 60-74 and cancellation of claims 1-22 and 38-59 in the reply filed on 05/09/2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Information Disclosure Statement***

3. The information disclosure statements (IDS) submitted on 01/08/2007, 01/22/2007, 01/30/2007, 10/29/2007, 01/11/2008 and 02/13/2008 were filed. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

***Specification***

4. The disclosure is objected to because of the following informalities: On page 8, line 29, a "content server 210" is

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disclosed. According to Figure 2, the "content server" should be referred to as element 230 and thus should read "content server 230".

Appropriate correction is required.

### ***Claim Objections***

5. Claim 69 is objected to because of the following informalities:

Claim 69 recites tracking performance information of advertisements "served pursuant to the". It appears the term "concept" was omitted by mistake and the claim should read "served pursuant to the concept". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 recites a **"no concept"** concept". It is unclear to the Examiner how a concept can have "no concept". As recited in the claim, if the "no concept" was modified by removing the quotation marks, the claim recitation would be extremely confusing. Thus, claim 29 is rejected for being indefinite. See MPEP 2173. The Examiner recommends that the Applicant use a different term to define this "no concept". For the purposes of examination, the Examiner interprets the **"no concept"** concept" as simply keywords.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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**7. Claims 23-27 and 60-64 are rejected under 35 U.S.C. 102(a)**

**and 102(e) as being anticipated by Paine et al. (US**

**2003/0055816 A1) (hereinafter Paine).**

8. As per claim 23, Paine discloses a computer-implemented method comprising:

a) accepting ad information ([0086], advertiser enters bidded search terms, see also [0093], spidering specified advertiser web site);

b) determining at least one of (1) a candidate concept and (2) a candidate concept indicator using the accepted ad information ([0086], string matching to find additional search terms, see also [0093], filtering search terms from terms used by other advertisers);

c) presenting the determined at least one candidate concept and candidate concept indicator to an advertiser ([0086], generated list of additional search terms to advertiser, see also [0093], filtered search terms stored in search listing database); and

d) determining a representation of the concept targeting information for the ad using, at least, advertiser feedback to the presented at least one candidate concept and candidate

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concept indicator ([0086], advertiser selects search terms from provided list).

9. As per claim 24, Paine discloses the computer-implemented method of claim 23 further comprising:

e) determining at least one of (1) a further candidate concept and (2) a further candidate concept indicator using advertiser feedback ([0112], advertiser selects terms from provided list, reruns filtering option in multiple iterations, see also [0108], advertiser runs multiple iterations in accepting and rejecting terms); and

f) presenting the determined at least one further candidate concept and further candidate concept indicator to the advertiser ([0112], recommended search terms presented to advertiser).

10. As per claim 25, Paine discloses the computer-implemented method of claim 23 wherein

the candidate concept indicator is a previously processed search query to which the ad would have been relevant ([0097], search terms have been used in searches in past month).

11. As per claim 26, Paine discloses a computer-implemented method comprising:

a) accepting targeting criteria information associated with an ad ([0086], string matching to find additional search terms, see also [0093], filtering search terms from terms used by other advertisers);

b) determining at least one targeting concept using at least the accepted targeting criteria information ([0086], string matching to find additional search terms, see also [0093], filtering search terms from terms used by other advertisers);

c) determining a representation of the determined at least one targeting concept ([0040], search results displayed as hyperlinks); and

d) associating the determined representation with the ad ([0040], Information associated with account identifier for advertiser retrieved when hyperlink selected).

12. As per claim 27. The computer-implemented method of claim 26 wherein

the act of determining at least one targeting concept further uses at least information from other ads using the

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same or similar targeting criteria information ([0093], search terms recommended based on other advertiser's search terms).

13. As per claim 60, Paine discloses an apparatus comprising:

at least one processor ([0039], processor of account management server);

at least one communications interface ([0112], user interface for advertiser); and

at least one storage device, the storage device storing program instructions which, when executed by the at least one processor ([0109], Code operable on processor device in conjunction with database), performs a method including:

a) accepting ad information ([0086], advertiser enters bidded search terms, see also [0093], spidering specified advertiser web site);

b) determining at least one of (1) a candidate concept and (2) a candidate concept indicator using the accepted ad information ([0086], string matching to find additional search terms, see also [0093], filtering search terms from terms used by other advertisers);

c) presenting the determined at least one candidate concept and candidate concept indicator to an advertiser ([0086], generated list of additional search terms to advertiser, see

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also [0093], filtered search terms stored in search listing database); and

d) determining a representation of the concept targeting information for the ad using, at least, advertiser feedback to the presented at least one candidate concept and candidate concept indicator ([0086], advertiser selects search terms from provided list).

14. As per claim 61, Paine discloses the apparatus of claim 60 wherein the stored program instructions which, when executed by the at least one processor, perform a method further including:

e) determining at least one of (1) a further candidate concept and (2) a further candidate concept indicator using advertiser feedback ([0112], advertiser selects terms from provided list, reruns filtering option in multiple iterations, see also [0108], advertiser runs multiple iterations in accepting and rejecting terms); and

f) presenting the determined at least one further candidate concept and further candidate concept indicator to the advertiser ([0112], recommended search terms presented to advertiser).

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15. As per claim 62, Paine discloses the apparatus of claim 60 wherein

the candidate concept indicator is a previously processed search query to which the ad would have been relevant ([0097], search terms have been used in searches in past month).

16. As per claim 63, Paine discloses an apparatus comprising:

at least one processor ([0039], processor of account management server);

at least one communications interface ([0112], user interface for advertiser); and

at least one storage device, the storage device storing program instructions which, when executed by the at least one processor ([0109], Code operable on processor device in conjunction with database), performs a method including:

a) accepting targeting criteria information associated with an ad ([0086], string matching to find additional search terms, see also [0093], filtering search terms from terms used by other advertisers);

b) determining at least one targeting concept using at least the accepted targeting criteria information ([0086], string matching to find additional search terms, see also

[0093], filtering search terms from terms used by other advertisers);

c) determining a representation of the determined at least one targeting concept ([0040], search results displayed as hyperlinks); and

d) associating the determined representation with the ad ([0040], Information associated with account identifier for advertiser retrieved when hyperlink selected).

17. As per claim 64, Paine discloses the apparatus of claim 63 wherein

the act of determining at least one targeting concept further uses at least information from other ads using the same or similar targeting criteria information ([0093], search terms recommended based on other advertiser's search terms).

- 18. Claims 28-32, 35-37 and 65-74 are rejected under 35 U.S.C. 102(e) as being anticipated by Meisel et al. (US 7,035,812 B2) (hereinafter Meisel).**

19. As per claim 28, Meisel discloses a computer-implemented method for determining concepts of a request, the method comprising:

a) accepting request information (column 9, lines 55-56, search terms entered by user);

b) determining at least one concept using the request information (column 9, lines 55-56, generates list of hyperlinks corresponding to search terms entered);

c) generating a representation of the determined at least one concept, wherein a score of least one of the at least one concepts in the generated representation is adjusted using performance information of advertisements that have been served pursuant to the concept (column 9, lines 55-60, transmits search results to network user as webpage).

20. As per claim 29, Meisel discloses the computer-implemented method of claim 28 wherein

the at least one concept includes a "no concept" concept (column 9, lines 48-52, keywords entered by user as search query).

21. As per claim 30, Meisel discloses the computer-implemented method of claim 28 wherein

the performance information is advertisement selection information (column 10, lines 51-66, click-through action is recorded via advertiser account).

22. As per claim 31, Meisel discloses the computer-implemented method of claim 28 wherein

the performance information is conversion information (column 11, lines 45-55, user performs action on advertiser website after click-through).

23. As per claim 32, Meisel discloses a computer-implemented method for adjusting a score of a concept relative to a request, the method comprising:

a) tracking performance information of advertisements served pursuant to the concept (column 10, lines 41-67 - column 11, lines 1-67, performance actions recorded); and

b) adjusting the score of the concept relative to the request using the tracked performance information (column 17, lines 4-67, intrinsic CTR value calculated, determines required bid amount and corresponding rank values).

24. As per claim 35, Meisel discloses the computer-implemented method of claim 32 wherein

the act of adjusting the score uses the tracked performance of the concept relative to tracked performance of at least one other concept (column 17, lines 4-19, intrinsic CTR value

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calculated for each search term, groups or categories of search terms, or across all search terms).

25. As per claim 36, Meisel disclose the computer-implemented method of claim 32 wherein

the performance information is advertisement selection information (column 10, lines 51-66, click-through action is recorded via advertiser account).

26. As per claim 37. The computer-implemented method of claim 32 wherein

the performance information is conversion information (column 11, lines 45-55, user performs action on advertiser website after click-through).

27. As per claim 65, Meisel discloses an apparatus for determining concepts of a request, the apparatus comprising:

at least one processor (Fig. 1, "34");

at least one communications interface (Fig. 1, "20"); and

at least one storage device, the storage device storing program instructions which, when executed by the at least one processor (Fig. 1, Account Management Server with

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storage("32") and processing system("34")), performs a method including:

a) accepting request information (column 9, lines 55-56, search terms entered by user);

b) determining at least one concept using the request information (column 9, lines 55-56, generates list of hyperlinks corresponding to search terms entered);

c) generating a representation of the determined at least one concept, wherein a score of least one of the at least one concepts in the generated representation is adjusted using performance information of advertisements that have been served pursuant to the concept (column 9, lines 55-60, transmits search results to network user as webpage).

28. As per claim 66, Meisel discloses the apparatus of claim 65 wherein

the at least one concept includes a "no concept" concept (column 9, lines 48-52, keywords entered by user as search query).

29. As per claim 67, Meisel discloses the apparatus of claim 65 wherein

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the performance information is advertisement selection information (column 10, lines 51-66, click-through action is recorded via advertiser account).

30. As per claim 68, Meisel discloses the apparatus of claim 65 wherein

the performance information is conversion information (column 11, lines 45-55, user performs action on advertiser website after click-through).

31. As per claim 69, Meisel discloses an apparatus for adjusting a score of a concept relative to a request, the apparatus comprising:

at least one processor (Fig. 1, "34");

at least one communications interface (Fig. 1, "20"); and

at least one storage device, the storage device storing program instructions which, when executed by the at least one processor (Fig. 1, Account Management Server with storage("32") and processing system("34")), performs a method including:

a) tracking performance information of advertisements served pursuant to the (column 10, lines 41-67 - column 11, lines 1-67, performance actions recorded); and

b) adjusting the score of the concept relative to the request using the tracked performance information (column 17, lines 4-67, intrinsic CTR value calculated, determines required bid amount and corresponding rank values).

32. As per claim 70, Meisel discloses the apparatus of claim 69 wherein

the act of adjusting the score includes increasing the score if the tracked performance information is above a threshold performance level (column 17, lines 56-67 - column 18, lines 1-13, intrinsic CTR value and market bid value calculated, listing that is more attractive than average results in higher ranking).

33. As per claim 71, Meisel discloses the apparatus of claim 69 wherein

the act of adjusting the score includes decreasing the score if the tracked performance information is below a threshold performance level (column 17, lines 56-67 - column 18, lines 1-13, intrinsic CTR value and market bid value calculated, listing that is less attractive than average results in lower ranking).

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34. As per claim 72, Meisel discloses the apparatus of claim 69 wherein

the act of adjusting the score uses the tracked performance of the concept relative to tracked performance of at least one other concept (column 17, lines 4-19, intrinsic CTR value calculated for each search term, groups or categories of search terms, or across all search terms).

35. As per claim 73, Meisel discloses the apparatus of claim 69 wherein

the performance information is advertisement selection information (column 10, lines 51-66, click-through action is recorded via advertiser account).

36. As per claim 74, Meisel discloses the method of claim 69 wherein

the performance information is conversion information (column 11, lines 45-55, user performs action on advertiser website after click-through).

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

37. **Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meisel et al. (US 7,035,812 B2) (hereinafter Meisel).**
38. As per claim 33, Meisel discloses the computer-implemented method of claim 32.

Meisel does not explicitly disclose wherein

the act of adjusting the score includes increasing the score if the tracked performance information is above a threshold performance level.

However, Meisel does teach comparative attractiveness of listings, wherein a listing that is more attractive than

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average results in a cost-per-click (CPC) value higher than average. This higher than average CPC value thus increases the ranking of the listing (column 18, lines 1-13).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Meisel to explicitly disclose increasing the score if tracked performance is above a certain performance threshold. It is well-known in the art that there is a direct relationship between bid values and listing scores, or rankings. The higher the score, the higher the bid value required and vice-versa. Meisel's teaching of comparative, or average, attractiveness of listings represents a performance threshold. When this threshold is exceeded, the CPC value and ranking of the listing are increased in turn. Thus, Meisel's teaching is an obvious variation of the disclosed invention.

39. As per claim 34, Meisel discloses the computer-implemented method of claim 32.

Meisel does not explicitly disclose wherein

the act of adjusting the score includes decreasing the score if the tracked performance information is below a threshold performance level.

However, Meisel does teach comparative attractiveness of listings, wherein a listing that is less attractive than average results in a cost-per-click (CPC) value less than average. This less than average CPC value thus decreases the ranking of the listing (column 18, lines 1-13).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Meisel to explicitly disclose decreasing the score if tracked performance is below a certain performance threshold. It is well-known in the art that there is a direct relationship between bid values and listing scores, or rankings. The lower the score, the lower the bid value required and vice-versa. Meisel's teaching of comparative, or average, attractiveness of listings represents a performance threshold. When this threshold is exceeded, the CPC value and ranking of the listing are decreased in turn. Thus, Meisel's teaching is an obvious variation of the disclosed invention.

***Conclusion***

40. Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

41. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM A. BRANDENBURG whose telephone number is (571)270-5488. The examiner can normally be reached on Monday-Thursday 6:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on 571-272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

W.B.

/Bradley B Bayat/  
Supervisory Patent Examiner, Art Unit 4115